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# Criminal Law -- Sufficiency of Indictment Under National Motor Vehicle Theft Act

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The purpose of the grand jury is to seek probable cause for trial; its indictment is a formal accusation and in no way a final adjudication against the defendant. On principle, it would seem that rule (3) is the sound one.<sup>9</sup> North Carolina, until the Levy decision, has blandly followed the total-incompetency rule.<sup>10</sup> The language of the principal case manifests an inclination to hold with the modern trend that in no case can the court examine the evidence, but precedent forbade such a course; hence the distinction between disqualified witnesses and incompetent evidence. The writer's investigation has not revealed that a like distinction obtains in any other jurisdiction. The North Carolina court failed to complete its jump toward the liberal view, and appears to have established a rule quite its own.

J. G. ADAMS, JR.

### Criminal Law—Sufficiency of Indictment Under National Motor Vehicle Theft Act.

The *National Motor Vehicle Theft Act*<sup>1</sup> makes it a crime to sell any motor vehicle moving as, or which is a part of, or which constitutes interstate commerce, knowing the same to have been stolen. In *Grimesly v. U. S.*<sup>2</sup> an indictment, drawn up under this act, charging the sale of a motor vehicle with knowledge that it had been transferred in interstate commerce and theretofore stolen was held insufficient, on the ground that it was not alleged that the automobile was moving in interstate commerce and that it did not further state that the automobile had been stolen.

The Sixth amendment provides, that, "in all criminal prosecutions the accused shall enjoy the right—to be informed of the nature and cause of the accusation. . . ." Congress, in order to limit the courts in testing whether or not the accused has been sufficiently informed,

<sup>9</sup> As to fundamentals of the grand jury system, see 1 WIGMORE, EVIDENCE (2nd ed. 1923) 20.

<sup>10</sup> "When an indictment is found upon testimony, all of which is incompetent, or of witnesses, all of whom are disqualified, the bill will be quashed. But where some of the testimony or some of the witnesses were incompetent, the court will not go into the barren inquiry how far such testimony or witnesses contributed to the finding of the bill," *State v. Coates*, *supra* note 3. The opinion of the principal case quotes the same extract, and points out that since the Coates case actually concerned only disqualified witnesses the court's statement of the rule to include incompetent evidence was so much too broad. But if it be granted that *all* of the evidence heard by the grand jury in a given case is incompetent, where is a logical basis for the distinction?

<sup>1</sup> 41 Stat. 324 (1919); 18 U. S. C. A. §408 (1927).

<sup>2</sup> 50 F. (2d) 509 (C. C. A. 5th, 1931).

has said, "No indictment . . . shall be deemed insufficient nor the trial affected by reason of any defect or imperfection in manner of form only, which shall not tend to prejudice of defendant."<sup>3</sup> Most of the courts are liberal in this matter and consider the true test whether or not the information enabled the accused to make a good defense.<sup>4</sup>

In the principal case the majority view was that, for all the indictment showed, the automobile might have come to rest in Florida long before defendant sold it. They were of the opinion that the essential element was that the car be moving in interstate commerce and that the indictment showed only an offense against the laws of the state. The same question was raised in *Katz v. U. S.*<sup>5</sup> and the court there said the defendants should not escape punishment because they supposed that they were violating only a state and not a federal law. The majority in the Grimesly Case were of the opinion that it should be specifically stated that the car in question was stolen. Most of the cases favor a more liberal view and hold it sufficient if it is alleged that the accused knew the care to be stolen.<sup>6</sup>

As stated in the strong dissent the sole defense was that the defendant did not know that the car in question was stolen, and the case

<sup>3</sup> N. C. ANN. CODE (Michie, 1927) §4623.

<sup>4</sup> Statute made it a crime to knowingly and fraudulently import liquor into the United States; indictment charging defendant with "unlawfully and feloniously" importing was held sufficient. *Wishart v. United States*, 29 F. (2d) 103 (C. C. A. 8th, 1928); indictment charging receipt and possession of goods knowing the same to have been stolen from an interstate freight car was held sufficient where the statute made it a crime to have in possession goods stolen from an interstate freight car, *Grandi v. United States*, 262 Fed. 123 (C. C. A. 6th, 1920); Espionage Act (1918) 40 Stat. 553 (1918), 50 U. S. C. A. 33 (1927) made it a crime against the United States to make seditious statements with the intent to hinder the operations of the Army or the Navy, indictment in *Shilter v. United States*, 257 Fed. 724 (C. C. A. 9th, 1919) drawn under this act charged defendant with making seditious statements and was held insufficient because there was nothing to connect defendant's acts directly or indirectly with the Army or the Navy; *Sonnenberg v. United States*, 264 Fed. 327 (C. C. A. 9th, 1920) a later case under the same act held it was not necessary that the words be spoken to some one in service; where the indictment drawn up under the statute prohibiting the use of the mails to defraud and merely charged defendant with having devised a scheme to defraud, held insufficient in *United States v. Hess*, 124 U. S. 483, 8 Sup. Ct. 571 (1888). By comparing the dates of these cases we see that the modern courts are more liberal in their views of the sufficiency of indictments.

<sup>5</sup> 281 Fed. 129 (C. C. A. 6th, 1922).

<sup>6</sup> *Isbell v. United States*, 26 F. (2d) 24 (C. C. A. 8th, 1928); *Wendell v. United States*, 34 F. (2d) 92 (C. C. A. 4th, 1929); *Brooks v. United States* (1925), 276 U. S. 432, 45 Sup. Ct. 345, 69 L. ed. 699; *Heglin v. United States*, 27 F. (2d) 310 (C. C. A. 8th, 1928); *Abraham v. United States*, 15 F. (2d) 911 (C. C. A. 8th, 1926).

was tried exactly the same as if the indictment had been letter perfect or exactly like it will be on new trial. The dissenting opinion is more in keeping with modern liberal decisions.<sup>7</sup>

J. H. SEMBOWER.

### Criminal Law—Tests of Legality of Searches and Seizures in North Carolina and Federal Courts.

Four federal cases<sup>1</sup> decided within the past five months call attention to the conflict between the right of the state to make reasonable searches and seizures and the individual right to be secure against unreasonable searches and seizures. Here are opposed the social need that crime be repressed and the social need that law shall not be flouted by the insolence of office.<sup>2</sup>

Search warrants were unknown to the common law and "crept in by imperceptible practice."<sup>3</sup> The Fourth Amendment embodies an old common law principle<sup>4</sup> of protection against unreasonable searches and seizures and though it does not apply to the states,<sup>5</sup> nevertheless all the states have included its equivalent in their constitutions.<sup>6</sup> The purpose of this protection, obviously, was not to afford a shield to the guilty. That it should be so is an inescapable incident to the preservation of the right to the people generally and affords a challenge to the law enforcement machinery to solve and reduce this result to a minimum.

If the situation is one where a lawful arrest may be made, then, it is permissible to search the person and things under the control and in the possession of the arrested person at the time of the arrest.<sup>7</sup>

<sup>1</sup> AM. LAW INST. CODE OF CRIM. PROC. §159.

<sup>2</sup> *Strom v. U. S.*, 50 F. (2d) 547 (C. C. A. 9th, 1931); *U. S. v. Dean*, 50 F. (2d) 905 (D. Mass. 1931); *U. S. v. Murray*, 51 F. (2d) 516 (D. Md. 1931); *U. S. v. Ruffner*, 51 F. (2d) 579 (D. Md. 1931).

<sup>3</sup> *People v. Defore*, 242 N. Y. 13, 150 N. E. 585 (1926), 270 U. S. 657, 46 Sup. Ct. 353, 70 L. ed. 784 (1925) (certiorari denied).

<sup>4</sup> *Entick v. Carrington*, 19 How. St. Tr. 1030, 2 Wils. K. B. 274 (1765).

<sup>5</sup> *Wilkes v. Wood*, 19 How. St. Tr. 1153 (C. B., 1763); *Entick v. Carrington*, *supra* note 3.

<sup>6</sup> *Burdeau v. McDowell*, 256 U. S. 465, 41 Sup. Ct. 574, 65 L. ed. 1048, 13 A. L. R. 1159 (1921).

<sup>7</sup> N. C. CONST., art. 1, §15; Fraenkel, *Concerning Searches and Seizures* (1921) 34 HARV. L. REV. 361.

<sup>8</sup> *Strom v. U. S.*, *supra* note 1; *Haverstick v. State*, 196 Ind. 145, 147 N. E. 625 (1925); *People v. Chiagles*, 237 N. Y. 193, 142 N. E. 583 (1923), 32 A. L. R. 676 (1924); *State v. Laundry*, 103 Ore. 443, 204 Pac. 958 (1922); *Hughes v. State*, 145 Tenn. 544, 238 S. W. 588, 20 A. L. R. 639 (1922); *State v. Deitz*, 136 Wash. 228, 239 Pac. 386 (1925).